IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1859 OF 2006

Anil Kashinath Ugale & Ors. ...Applicants

Vs.

The State of Maharashtra & Ors. ...Respondents

Shri Usma Chistu holding for Parvez Ubharay for the Applicants.
Shri S.V.More, A.P.P. for the State.
Shri V.K.Tiwari for the Respondent Nos.2 and 3.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 21, 2006.

P.C.:

1. Heard the Advocate appearing for the Applicant and the Advocate appearing for second Respondent. The second Respondent is the first informant who is the father of the deceased. Initially, F.I.R. was lodged for offence under section 498-A read with section 34 of the Indian Penal Code. Later on section 306 of the Indian Penal Code was applied. The learned Advocate appearing for the Applicant submitted that the second Respondent wishes to compound the case. He invited my attention to the statement of various witnesses and submitted that no case of offence under section 498-A and/or section 306 of the Indian Penal Code is made out. He placed reliance on the decision of the Apex Court in the case of **B.S.Joshi & Ors. Vs. State of**

Haryana (2003 ALLMR (Cri.) Page 1162) as well as decision of the learned single Judge of this court in the case of **Dinesh Bhanurao Dhone Vs. State of Maharashtra & Anr (2005(1) Bombay Cases Reporter(Cri.) Page 367)**.

2. The learned Advocate appearing for the second Respondent has relied upon affidavit of the second Respondent. He submitted that he has no objection for passing order of quashing the F.I.R. The learned A.P.P. opposed the Application.

3. I have considered the submissions. I have also perused the F.I.R., statements of witnesses and other documents forming part of the charge-sheet. There is a statement of the second Respondent which makes out a case for commission of offence under section 498-A and 306 of the Indian Penal Code. Apart from his statement, there is a statement of the mother of the deceased which also makes out a case of commission of the offence. There are statements of the other witnesses recorded by the police. I have also perused the notes of Post Mortem. After having considered the said material, it is not possible to accept the contention that there is no material to proceed against

the Applicants.

4. Perusal of the affidavit filed by the second Respondent shows that he has not at all stated that his complaint was not true or that what has been stated by him and his wife is incorrect. All that the second Respondent has stated is that now he has cordial relations with the Applicants and that he would not like to prosecute the Applicants. When, the life of the second Respondent's daughter is lost, there is no reason given in the affidavit as to why he wants to get the F.I.R. lodged by him quashed.

5. Offence under section 306 of the Indian Penal Code is a very serious offence. It is an offence against society. Invoking the jurisdiction under section 482 of the said Code, in the facts of the case, is nothing but abuse of process of law. The reliance placed on the decision of the Apex Court in the case of B.S.Joshi (Supra) is completely misplaced. Firstly, this was not a case where offence under section 306 of the Indian Penal Code was alleged. This was a case where a prosecution arose out of the dispute between husband and wife and there was a settlement between husband and wife. The Apex Court found that the

settlement was a genuine settlement. In view of the settlement between the husband and wife, F.I.R. was quashed. The decision in the case of Dinesh Bhanurao Dhone (supra) has also no application in the facts of this case as the learned single Judge of this court was dealing with a case where allegations were under sections 406, 408, 468, 471 of the Indian Penal Code and where the complaint arose out of a commercial transaction between parties. It was a case where there was a compromise between the parties.

6. No case is made out in this case for invoking jurisdiction of this court under section 482 of the said Code. Application is rejected.

JUDGE